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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,927	07/09/2001	Jilene A. Repp	1295-00044	8912

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EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/09/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/900,927

Applicant(s)

REPP ET AL.

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21, 26, 28, 31, 34, 35, 37 and 67-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 and 84-102 is/are rejected.
- 7) ☐ Claim(s) 22, 23, 26, 28, 29, 31, 32, 34-37, 39 and 68-83 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) ↓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12 ✓
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment, Paper No. 13, has been entered as requested. Claims 24, 25, 27, 30, 33, 38, and 40 have been canceled and claims 21, 26, 28, 31, 34, 35, 37, and 39 have been amended, and new claims 67-102 have been added.
2. Applicant's cancellation of claims 26, 31, and 39 renders moot the 35 U.S.C. 112, second paragraph rejections set forth in section 6 of the last Office Action.
3. An Examiner's amendment, Paper No. 14, has been entered. Claims 21, 67, and 86 have been amended to delete the word "essentially". Claim 67 was further amended to insert the word "by" after the word cover.
4. Applicant's amendments and accompanying remarks are found to overcome the indefiniteness of claims 26, 31, 34, 35, 37, and 39 as set forth in section 6 of the last Office Action and pending claims 21-23, 26, 28-29, 31-32, 34-37, 39 and 67-85 are now found patentably distinguishable over the prior art of record. As such the 112 2<sup>nd</sup> paragraph rejections set forth in sections 6 of the last Office Action and the 102 (b) rejections set forth in the sections 13-18 in the last Office Action are withdrawn. The prior art of record fails to teach or suggest a batting consisting of cotton, polyester, or cotton-polyester having an adhesive provided such that at least one cover can be attached to the batting by an adhesive connection at the opposing faces of the batting during the formation of the quilt.

### ***Claim Objections***

5. Claim 85 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the

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claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 85 is objected to because of the term "essentially". The term "essentially" broadens the subject matter of the claim from which it depends instead of further limiting the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is suggested to delete the term "essentially".

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

*The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

7. Claims 21, 67, 84, 86 and 102 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 21, 67, and 86 are indefinite because it is unclear to the Examiner how the adhesive is provided with the batting. Specifically, is the adhesive applied over the surface of the batting or within the batting? It is suggested that the Applicant specify where and how the adhesive is provided with the batting.

9. Claim 86 is further indefinite because it is unclear to the Examiner the difference between "loft" and batting. The term "loft" is contrary to the common definition, which is a property of a batting not the batting itself. Does the Applicant intend to claim a web?

10. Claim 84 is indefinite for reciting the phrase "such as" which renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is suggested to delete this phrase.

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11. Claim 102 is indefinite because of the term "low-loft". The term "low-loft" is a relative term which renders the claim indefinite. The term "low-loft" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claims 86-102 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the specification does not teach a batting comprising a "loft" as presently claimed. The specification merely teaches batting can be classified according to the amount of "loft" present.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 86,89,91,92,93,95,96, and 98 are rejected under 35 U.S.C. 102(b) as being anticipated by as being anticipated by Barhite, US 3,278,954.

The patent issued to Barhite is directed to uncompacted batts that are suitable for use as cushioning and insulation (Title and Column 1, lines 6-10). The uncompacted batts may consist

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of a variety of staple fibers such as cotton, wool, polyester, or rayon (Column 3, lines 11-20).

Barhite teaches that all or a portion of the staple fibers may be coated with a low melting thermoplastic material and fused in an oven to cause adhesion (Column 4, lines 5-9). Barhite also teaches that the quilting of comforters can be achieved by heat sealing techniques rather than stitching when the staple fibers are made up of or are coated with a thin layer of a flexible low melting thermoplastic material (Column 4, lines 9-14 and lines 55-60). The Applicant's use of the open claim language of "comprising" does not preclude Barhite from being relied upon as a reference.

*Allowable Subject Matter*

16. Claims 21 and 67 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

17. Claims 84 and 85 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

18. Claims 22,23,26,28,29,31,32,34-37,39 and 68-83 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Specifically, the claim language of "consisting" of claims 21,41, and 67 precludes the prior art of Barhite from being relied upon as a reference. Barhite teaches a batt comprising feather tufts (e.g., feathers) and wherein quilting may be achieved by heat-sealing techniques.

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The recitation of consisting of cotton, polyester, or cotton-polyester by Applicant in claims 21, 67, and 86, excludes feathers as a constituent and thus overcomes the teachings of Barhite.

### *Conclusion*

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

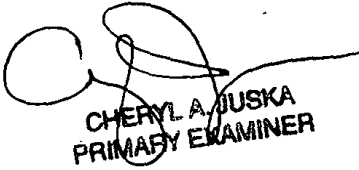
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

ls-  
April 7, 2003

  
CHERYL A. JUSKA  
PRIMARY EXAMINER